IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICITON

WRIT PETITION NO.833 OF 1994

1. Shri Madankumar Babulal Sanghvi
   Age 45 years, Occu. Business
   Residing at 1343, Shivaji Nagar,
   Pune - 411 005.

2. M/s.Sanghvi Rerolling Industries
   Pvt.Ltd., Through its Director
   Shri Madankumar Babulal Sanghvi
   Adult, Occ. Business, Residing
   at 1343, Shivaji Nagar,
   Pune - 411 005.

3. M/s.Steel India, a partnership
   firm, being Petitioner No.1 and
   Petitioner No.2, as its partners
   having its registered office at
   128/2, Akurdi, Chinchwad,
   Pune - 411 019.

4. M/s.Prestige Estate, a partner-
   ship firm, registered under the
   provisions of the Partnership
   Act, 1932, having its office at
   Prestige Complex, Chinchwad,
   Pune 411 019, through its
   partner, Shri Vijaykumar
   Kacharadas Sanghvi, Age about
   39 years, Occ. Business,
   residing at Gandhi Peth,
   Chinchwad, Pune 411 033 and
   Shri Gajandand Dharamshe Babar,
   Age about 43 years, Occu.Business
   Residing at Mohan Nagar,
   Chinchwad, Pune - 411 019. .. Petitioners.

Versus

1. Union of India,
   (Summons to be served on the
   learned Addiotional Government
   Pleader appearing for the
   Union of India, under the
   provisions of Order 27 Rule 4
   of the Code of Civil Procedure,
   1908).

2. The Appropriate Authority,
   Ahmedabad, (The Appropriate
   Authority under the provision

of Chapter 20-C of the Income Tax Act, 1961).
(Summons to be served on the learned Additional Government Pleader appearing for the Union of India, under the provisions of Order 27 Rule 4 of the Code of Civil Procedure, 1908). .. Respondents.

Mr.J.D. Mistri for the petitioners.

Mr.R. Asokan for the respondents.

CORAM : H.L. GOKHALE, &
J.P. DEVADHAR, JJ.

DATED : 3RD OCTOBER, 2006.

ORAL JUDGMENT (Per H.L. Gokhale, J.)

1. This writ petition seeks to challenge the order dated 27th January, 1994 passed by the members of the Appropriate Authority under Section 269UD (1) of the Income Tax Act, 1961.

2. The petition was admitted on 7th June, 1997 and the parties were directed to maintain status-quo in the meanwhile. Subsequently, a reply has been filed by Mr.V.V. Nagarkar, Income Tax Officer in the office of the Appropriate Authority on 6th October, 1997. The petitioners have filed rejoinder.

3. The petitioner Nos.1 to 3 are owners of a plot of land situated at Chinchwad, Pune bearing Survey No.128 Hissa No.2 admeasuring 1,67,677 square feet. The first three petitioners entered into an agreement

of development with petitioner No.4 on 22nd September, 1993 for development of the property to the extent of 54000 square feet thereof. The price agreed for the development of this part of 54000 square feet was Rs.54,54,000/-. Thus, the accepted rate was Rs.101/- (Rs.One Hundred One only) per square feet. As per the law prevalent at that time, the petitioners submitted the requisite form No.37-I to the tax authorities.

4. Thereafter, the petitioners received a show cause notice dated 25th November, 1993 calling upon them to show cause as to why the plot should not be acquired for undervaluation under the provisions of Chapter XX-C of the Income Tax Act, 1961. All that the show cause notice states is that the apparent consideration for that plot had been declared at Rs.54,54,000/- and that the petitioners should show cause as to why it should not be purchased under the said chapter.

5. The petitioners appeared in person in response to the show cause notice. They were asked to file their written submissions which they filed and according to the petitioners that was the only hearing afforded to them, whereafter straight way the order of compulsory acquisition came to be passed on 27th January, 1994 which is under challenge in the present petition.

6. Mr.Mistri, learned counsel appearing for the petitioners has taken us through the order under challenge. He has submitted that in the show cause notice, no comparable instance was brought to the notice of the petitioners on the basis of which the land was being compulsorily acquired. The order referred to the nearby property of Eagle Flask Industries Limited as a comparable instance. That factory is having a two storeyed industrial building. The total area of that plot is supposed to be 10764 square feet. Firstly, value of the building is arrived at the rate of Rs.250/- per square feet at Rs.16,98,300/-. The discounted value of the apparent consideration is arrived at Rs.29,92,380/-. The value of the building is deducted from this figure to arrive at Rs.12,94,080/- as the value of the land. This figure is thereafter divided by the area of the plot i.e. 10764 to arrive at the land rate of Rs.120/- per square feet. Therefore, it is held that the agreed rate of Rs.101/- per square feet in the present case amounts to undervaluation.

7. This method and the manner in which the property was sought to be acquired for the alleged undervaluation has been assailed relying upon a few judgments of this Court. Firstly reliance is placed on the judgment of Division Bench in the case of

Shreyas Builders and another V/s. M.D. Kodnani & others reported in 242 ITR 320. In that matter the judgment of the Apex Court in C.B. Gautam V/s. Union of India (1993) 199 ITR 530 was followed and it was held that the show cause notice which does not disclose the material on the basis of which the Appropriate Authority has reached the tentative conclusion that the transaction has been undervalued and the reasons for reaching that conclusion, is a defective show cause notice and an order passed thereon will be an incompetent order. Same view has been taken in another Division bench judgment in the case of Jagdish Electronics (India) Pvt. Ltd. & Another V/s. Appropriate Authority, Income Tax & Others reported in 242 ITR 326. The Division Bench has held therein that it is a condition precedent that the Appropriate Authority must reach tentative conclusion that the property has been undervalued and the material on the basis of which the tentative conclusion is arrived at must be disclosed in the notice to the party to enable it to explain its position. Mr.Mistri, learned counsel appearing for the petitioners submits that neither of these two essential conditions are reflected in the method by which the petitioners' property came to be acquired. He, therefore, submits that it is just and necessary that the impugned order be interfered.

8. Mr.Asokan, learned counsel appearing for the respondents submitted that the petitioners did not ask for any such reasons or comparable instances when they filed their reply. In his submission if the petitioners do not seek any such information, the authority is not bound to furnish the same. The other submission of Mr.Asokan was that the fourth petitioner is a sister concern of petitioner Nos.2 and 3 and that they are having a common interest.

9. As far as the individuals being common partners in the two concerns is concerned, we fail to see as to how it can validate the order if it is otherwise invalid. Similarly, it cannot lie in the mouth of an authority to contend that the party must seek information if it wants to defend the action being initiated by the authorities. What is material to note is that under the relevant section, it is the authority which is initiating steps of compulsory acquisition of the property for the alleged undervaluation. This being the condition precedent, the authority must disclose to the party concerned, as to how the said transaction which was being undertaken by the party suffered from undervaluation and that the same is on the basis of that particular comparable instance. It is not permissible for the authority at the time of hearing to decide that the transaction involves undervaluation on the basis of an instance

which was not cited in the show cause notice. That denies an adequate opportunity to the party concerned to defend its position against the compulsory acquisition on the basis of undervaluation.

10. For the reasons stated above, in our view the impugned order is not tenable. Accordingly, we make the rule absolute and set aside the order which has been passed by the respondent No.2 dated 27th January, 1994. In the facts of the present case, we do not award any costs.

11. The writ petition stands disposed of.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)